

Wenner Ford Tractor Rentals, Inc. and Lawrence Estenich

International Union of Operating Engineers, Local 542 and Lawrence Estenich. Cases 4-CA-21343 and 4-CB-6807

December 16, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On March 29, 1994, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent Union filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions as modified and to adopt the recommended Order as modified.

We agree with the judge that the Respondent Employer violated Section 8(a)(1) and (3) of the Act and that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act when the Respondent Union caused the Respondent Employer to remove Lawrence Estenich from his position as master mechanic because of Estenich's opposition to union officials in an internal union election. We also agree with the judge that the Respondent Employer violated Section 8(a)(1) and (3) of the Act by laying off Estenich in January 1993 because of Estenich's opposition to union officials.² We reverse, however, the judge's finding that the Respondent Union caused the Respondent Employer to lay off Estenich.

I. REPLACEMENT OF MASTER MECHANIC

Estenich was classified as a master mechanic sometime after the Respondent Employer was awarded the PECO contract. Estenich was appointed to the master mechanic position at the request of Union Business Agent Hearn because of Estenich's support for Hearn in the Union. As a master mechanic, Estenich received a wage rate above the base rate for backhoe operators. Even though he was designated as the master me-

chanic, Estenich continued to perform only the duties of a backhoe operator.

Following the internal union election in August 1992, Business Agent Hearn of the United slate was replaced by Tom Denise³ of the victorious Recovery slate. The judge found that the head of the Recovery slate knew that Estenich was an active supporter of the United slate. Shortly after the election, Denise met with the Respondent Employer's operational manager, Murphy, and announced his choice for union shop steward. Denise then asked Murphy whether the Employer was having any trouble with Estenich as master mechanic. Murphy replied that there were some problems, and Denise suggested that, if the Employer was dissatisfied with Estenich, D'Annunzio, a supporter of the new union slate, should be designated as master mechanic. D'Annunzio was named as the new master mechanic on October 13, 1992.⁴

The Respondent Union excepts to the judge's finding that both the Respondents violated the Act when Estenich lost his position as a master mechanic. The Respondent Union argues that: (a) the Respondent Employer had legitimate business reasons for removing Estenich from his position as master mechanic; (b) the evidence shows that the Respondent Union only inquired whether the Employer was happy with Estenich as master mechanic and merely suggested a replacement in case the Employer was not happy; and (c) there is no evidence to show that the Respondent Union caused the Respondent Employer to remove Estenich. We find no merit in the Respondent Union's exception.

The General Counsel established a prima facie case that Estenich was removed from the master mechanic position because of his protected intraunion politics. *Wright Line*, 251 NLRB 1083, 1089 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981). The judge found that both the Respondents were aware of Estenich's support for the United slate. Further, the judge found that the Respondent Employer told Estenich that he had been removed because of the Respondent Union. Finally, the General Counsel's prima facie case is supported by the testimony of the Respondent Union's own witness, Denise, who explained that he asked whether the Employer had a problem with Estenich because "if I have an opportunity to have a person in line that I would be dealing with that I felt comfortable with, well, I'd

¹The Respondent Union has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully reviewed the record and find no basis for reversing the judge's findings.

²The Respondent Employer did not file any exceptions to the judge's decision.

³We note that the Respondent Union's and the General Counsel's briefs spell this witness' name "Danese," but that it is spelled "Denise" in the transcript and in the judge's decision. None of the parties mentioned this harmless discrepancy and, for consistency, we have used the spelling found in the transcript and the judge's decision.

⁴This special position was subsequently eliminated entirely, and in early January 1993 D'Annunzio was appointed to a steward position in the unit, replacing an employee who had been laid off by the Respondent Employer for performance-related reasons.

be in better shape.” Denise went on to testify that after the Employer allegedly stated that it had a problem with Estenich, Denise said that they could discuss replacing the master mechanic and that he felt comfortable with Joe D’Annunzio. When Denise was asked what he meant by being “more comfortable with,” Denise responded that he meant “knowing what kind of a Union guy he was.”

In addition to contributing to the General Counsel’s prima facie case, we find that Denise’s description of his motivation for suggesting Estenich’s replacement also establishes, when viewed in context with all of the facts, that the Respondent Union caused the Respondent Employer to replace Estenich as the master mechanic. It is clear that until the Respondent Union inquired about Estenich and suggested a replacement, the Respondent Employer did not intend to remove Estenich from the master mechanic position. It is equally clear that Denise did not feel “comfortable” with Estenich because of Estenich’s support for the United slate. A review of all the testimony relating to this issue supports Murphy’s interpretation that the Union clearly indicated that it wanted to remove Estenich as master mechanic and replace him with D’Annunzio. Thus, we agree with the judge that the Respondent Union precipitated Estenich’s removal from the master mechanic position by prompting the Employer to find reasons for the removal.

The foregoing evidence establishes a prima facie case of discrimination. The Respondents may rebut that case by showing that Estenich would have been removed from the master mechanic position even in the absence of his intraunion politics. Contrary to the Respondent Union’s assertion, the Respondent Employer did not adequately explain any legitimate business justification it had for removing Estenich. The Respondent Union admits that no one questioned Estenich’s abilities as a backhoe operator, but contends that the Employer had a problem with Estenich because, at sometime in the past, he had been rude to office staff. As the judge found, however, the Respondent Employer could not provide details of the alleged instances of rudeness or even describe when it occurred. Further, if the Respondent Union had not inquired, the Respondent Employer would not have thought that Estenich’s alleged rude behavior was sufficient cause to remove him from the master mechanic position. In these circumstances, we find that the Respondents failed to demonstrate that Estenich would have been replaced in the absence of his support of the United slate.

II. THE LAYOFF

While we agree with the judge that there is sufficient evidence to show that the Respondent Union unlawfully caused the Respondent Employer to remove

Estenich from the position of master mechanic in 1992, we do not agree that there is sufficient evidence to show that the Respondent Union caused the Respondent Employer to lay off Estenich from a regular mechanic’s position in January 1993.⁵

Although there was no direct evidence that the Union requested the Employer to lay off Estenich, the judge relied on the following circumstantial evidence to find that the Respondent Union caused Estenich’s layoff: (1) the fact that Respondent Union caused Estenich’s removal from the master mechanic position; and (2) the strong evidence showing that the Respondent Employer laid off Estenich because of his intraunion politics; i.e., the Respondent Employer did not offer any legitimate business reason for the layoff and an agent of the Respondent Employer, Murphy, testified that he told PECO that Estenich was being laid off because of pressure from the Respondent Union. In addition, the General Counsel submits that the coincidental timing of Estenich’s layoff, the Respondents’ agreement to completely eliminate the master mechanic position, and D’Annunzio’s appointment as shop steward suggests that Estenich’s layoff was merely one of several decisions made by the Respondent Union and executed by the Respondent Employer.

Although circumstantial evidence can be sufficient to establish a violation of the Act, the Board has stated that “[t]o establish an ‘attempt to cause’ violation, there must be some evidence of union conduct; it is not sufficient that an employer’s conduct might please the union.” *Toledo World Terminals*, 289 NLRB 670, 673 (1988). Unlike the circumstances surrounding the removal of Estenich as master mechanic, there is absolutely no direct evidence that the Union requested or even suggested that Estenich be laid off. The General Counsel’s evidence on this issue is limited to inferences drawn from the Union’s action in causing Estenich’s removal from the master mechanic position and from the timing of his layoff. We find that this evidence is insufficient to establish that the General Counsel has met its burden of proving, by a preponderance of the evidence, that the Respondent Union caused the Respondent Employer to lay off Estenich.⁶ Thus, in the absence of any evidence relating to the Respondent Union’s conduct with respect to this issue, we reverse the judge’s finding that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act

⁵ Chairman Gould would adopt the judge’s analysis of the layoff issue and his finding that the Union unlawfully caused the Employer to lay off Estenich.

⁶ As the judge noted, the testimony of the Employer’s agent, Murphy, regarding the Respondent Union’s pressure to lay off Estenich is not admissible against the Respondent Union. The testimony is admissible, however, against the Respondent Employer; and, as noted above, the Respondent Employer has filed no exceptions to the judge’s finding that its layoff of Estenich was unlawfully motivated by the Employer’s response to “internal union politics.”

by causing the Respondent Employer to lay off Estenich.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent Employer, Wenner Ford Tractor Rentals, Inc., Concordville, Pennsylvania, its officers, agents, successors, and assigns, and the Respondent Union, International Union of Operating Engineers, Local 542, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph A,2(a).

“(a) Jointly and severally with the Respondent Union make Lawrence Estenich whole for any loss of pay and other benefits suffered by him because of his unlawful removal as master mechanic in October 1992. Make Lawrence Estenich whole for any loss of pay and other benefits suffered by him because of his unlawful layoff in January 1993. Backpay to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).”

2. Substitute the following for paragraph B,1(a).

“(a) Causing employers to remove members as master mechanics because the member opposed union officials in an internal union election.”

3. Substitute the following for paragraph B,2(a).

“(a) Jointly and severally with the Respondent Employer make Lawrence Estenich whole for any loss of pay and other benefits suffered by him because of his unlawful removal as master mechanic in October 1992. Backpay to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).”

4. Substitute the attached notices for those of the administrative law judge.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations not found.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT remove as master mechanic or lay off employees because of their opposition to union officials in internal union elections.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL expunge from our files any references to the removal as master mechanic and layoff of Lawrence Estenich and notify him in writing that this has been done and that evidence of that unlawful action will not be used as a basis for personnel action against him.

WE WILL, jointly and severally with the Respondent Union where appropriate, make Lawrence Estenich whole for any loss of pay or benefits he suffered because of the discrimination against him, plus interest.

WENNER FORD TRACTOR RENTALS, INC.

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT cause employers to remove members as master mechanics because of their opposition to union officials in an internal union election.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our members in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL jointly and severally with the Respondent Employer make Lawrence Estenich whole for any loss of pay or benefits he suffered because of his removal from the master mechanic position, plus interest.

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 542

Peter C. Verrochi, Esq., for the General Counsel.

John S. Wenner, Esq., of Concordville, Pennsylvania, for the Respondent Employer.

Samuel L. Spear, Esq., of Philadelphia, Pennsylvania, for the Respondent Union.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On January 7 and 12, 1993, a charge and an amended charge were filed by Lawrence Estenich against Wenner Ford Tractor Rentals, Inc. (Respondent Employer or the Employer).

On January 7 and 12, 1993, a charge and an amended charge were also filed by Lawrence Estenich against Local 542, International Union of Operating Engineers (Respondent Union or the Union).

On March 31, 1993, the National Labor Relations Board, by the Regional Director for Region 4, issued a complaint alleging that Respondent Employer and Respondent Union violated Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2), respectively, of the National Labor Relations Act (the Act), when the Respondent Union caused the Respondent Employer to remove Lawrence Estenich from his position as a master mechanic in October 1992 and to lay off Lawrence Estenich in January 1993 because Lawrence Estenich opposed Respondent Union officials in an internal union election.

Respondent Employer and Respondent Union filed answers in which they deny that they violated the Act in any way.

A hearing was held before me in Philadelphia, Pennsylvania, on December 13 and 14, 1993.

On the entire record in this case, to include posthearing briefs submitted by the General Counsel and the Respondent Union, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Employer, a Pennsylvania corporation, with its principal place of business located at Concordville, Pennsylvania, has been engaged in the leasing of backhoes and backhoe operators.

During the past year, Respondent Employer, in conducting its business operations described above provided services valued in excess of \$50,000 to Philadelphia Electric Company (PECO), an enterprise within the Commonwealth of Pennsylvania.

At all material times, PECO has been a public utility engaged in the generation, transmission, distribution, and sale of electricity and the transmission and distribution of gas with its principal place of business located in Philadelphia, Pennsylvania.

During the past year, PECO, in conducting its business operations described above derived gross revenues in excess of \$250,000, and purchased and received goods valued in excess of \$50,000 directly from points located outside the Commonwealth of Pennsylvania.

At all material times, Respondent Employer and Respondent Union admit, and I find, that the Respondent Employer has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent Employer and Respondent Union admit, and I find, that Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Lawrence Estenich operates a backhoe. He has been a member of the Union since 1974. Prior to 1988 Estenich was employed by a company which contracted with Philadelphia Electric Company (PECO) to provide backhoe operators to PECO. Estenich was paid by his employer but worked under the supervision and direction of PECO supervisors. He had very little contact with his employer.

In 1988 Respondent Employer took over the PECO contract. It hired a number of the operators who had worked for the company who did the work for PECO before Respondent Employer got the contract. One of the operators was Lawrence Estenich.

Estenich became an employee of Respondent Employer but worked every day under the direction and supervision of PECO's supervisor. His contact with the Respondent Employer was very limited.

At the time Respondent Employer took over the PECO contract then Union Business Agent John J. Hearn met with supervisors of Respondent Employer and asked them to designate Lawrence Estenich as a master mechanic. A master mechanic at the time made a \$1.50 an hour more than an operator. In Estenich's case he continued to perform operator's duties on a backhoe but received the extra compensation. In time the extra \$1.50-an-hour compensation was split with the designated shop steward receiving an extra \$.50 per hour and the master mechanic receiving an extra \$1 per hour. Hearn told Respondent Employer to designate Estenich as the master mechanic because of Estenich's support of Hearn in the Union.

In the fall of 1992 a contested union election was held. The election was between the United slate of officers headed by incumbent Union Business Manager John Arnone and the Recovery slate headed by Robert Heenan. Lawrence Estenich was an active supporter of the incumbent United slate headed by John Arnone. Robert Hearn knew that Estenich was a supporter of the United slate. Indeed on the election day in August 1992 Heenan saw Estenich at the union hall wearing a United slate shirt. The Recovery slate won a close election and was sworn into office in early September 1992. Arnone was out as business manager, the highest office in the Union, and his assistant John Hearn was out as business agent. Heenan was the new business manager and Tom Denise became one of the Union's business agents.

A short time later new Business Agent Tom Denise met with supervisors of Respondent Employer. Denise told them that he wanted Dave Morris as the new steward. All parties to the litigation agree that the Union could designate who it wanted as steward. Denise asked, however, about master mechanic Estenich. Specifically was the Employer having any trouble with him. John Wenner may or may not have said something about Estenich, along the lines of Estenich being rude to a woman in the Employer's office or that some foremen at PECO didn't think the world of Estenich, i.e., he was not as enthusiastic as they may have liked in doing whatever they asked. The Union "recommended" that Joseph D'Annunzio be designated the master mechanic reducing Lawrence Estenich to operator. Estenich would no longer receive any extra compensation. I put the word "recommended" in quotes because it is clear to me, having observed the witnesses and heard the evidence, that this so-called "recommendation" was in the nature of an order. Curiously Wenner, at the hearing before me, could not remember how or when Estenich had been rude to one of the women in his office nor could he articulate specifically how any of PECO's foremen had found Estenich wanting or when he had even heard that they found Estenich wanting.

The Union wanted Estenich removed as master mechanic and D'Annunzio to replace him. Why? Since PECO Supervisor Harry White testified that he had no problems whatso-

ever with Estenich's performance of duty and White was the man to be satisfied the removal of Estenich as master mechanic had to have something to do with Estenich's relationship to the Union. Needless to say Joseph D'Annunzio was a supporter of the victorious Recovery slate and Lawrence Estenich was a supporter of the losing United slate. No rational person could conclude that Estenich was removed as master mechanic for any reason other than the fact that he supported the losing slate in the recent union election. Indeed when told by Supervisor Bill Murphy that he was no longer a master mechanic Estenich asked why and Murphy told him it was because of the Union. Respondent Employer removed Lawrence Estenich as master mechanic because the Union wanted them to and the Union wanted them to because of Estenich's opposition to officials in the recent internal union election. The master mechanic position was not a union-appointed position. It is a violation of Section 8(b)(1)(A) and (2) of the Act for Respondent Union to cause an employer to discriminate against a union member because of that union member's opposition to union officials in an internal union election. And, it is violation of Section 8(a)(1) and (3) of the Act for the employer to carry out the wishes of the Union. See *Roofing Metal & Heating Associates*, 304 NLRB 155, 163 (1991); *Operating Engineers Local 478 (Stone & Webster)*, 274 NLRB 567, 571 (1985).

During the fall of 1992, the Respondent Union and Respondent Employer negotiated regarding the need for having any operator designated as a master mechanic and in early January 1993 agreed that Respondent Employer did not have to designate and pay any operator as a master mechanic. Joseph D'Annunzio was removed as master mechanic and designated as shop steward. This removal of the master mechanic designation is not alleged as nor is it an unfair labor practice. However, if any union member was so designated as a master mechanic as Estenich was it was unlawful to remove him for an illegal reason (his opposition to the winning slate in an internal union election) and substitute in his place a union member (in this case Joseph D'Annunzio) who had supported the winning slate of officers in the internal union election.

On January 4, 1993, Lawrence Estenich was laid off. Why? For openers it is clear that PECO was satisfied with the work performance of Estenich. Harry White, the PECO supervisor of Estenich, testified before me that he had no complaints at all about Estenich. Although John Wenner mentioned some difficulties with Estenich he insisted before me that they were not serious and conceded that Estenich was a good operator. The so-called difficulties Wenner referred to were that Estenich had been rude to a woman in Wenner's office but Wenner did not know when he was rude or how he was rude. Wenner also testified that some PECO foremen, who worked under Harry White at some time in the past (he couldn't remember when) questioned how hard Estenich worked. Wenner couldn't remember what specific complaints they had and, in any event, their boss Harry White had no problems at all with Estenich. Estenich was laid off on January 4, 1993. He was replaced by Ted Spicer, another union operator. Harry White preferred Estenich to Spicer and spoke with Respondent Employer complaining about Spicer. Respondent Employer removed Spicer from the job under White's supervision and recalled Estenich. Estenich was returned to work in February 1993 after he had

filed a charge with Region 4, and, according to John Wenner, he was recalled because Respondent Employer wanted to minimize its financial exposure if they lost the instant unfair labor practice case.

Again, why was Estenich laid off in January 1993? Back in late September or early October 1992 Bill Murphy, a supervisor for Respondent Employer, called Harry White at PECO and told him that Respondent Employer was going to have to replace both Estenich and another operator, Bob DiFrancesco, who was the shop steward. White asked why and Murphy told him it was because of the recent union election and the fact that both men supported the losing side. White told Murphy that PECO had no problem with either man and asked Murphy not to let them go until he (White) returned from vacation. White wanted to tell the men when they were let go that PECO had nothing to do with the loss of their jobs. Sometime later in November 1992 Murphy told White that everything was on hold and then in January 1993 Murphy met with White and told him that Respondent Employer was laying off Estenich. DiFrancesco was never laid off.

On October 19, 1992, Bill Murphy called John Hearn. Hearn had been removed as business agent in September 1992. He had been part of the John Arnore United slate which lost the internal union election. Murphy told Hearn that he had a problem and went on to tell Hearn that Tom Denise, the new union business agent, and Robert Heenan, the new union business manager, wanted Lawrence Estenich and Bob DiFrancesco removed from their jobs because they supported the United slate in the recent union election. Murphy went on to tell Hearn that Denise did not at that time have any supporters of the Recovery slate immediately available to replace Estenich and DiFrancesco. Hearn gave Murphy the names of some labor attorneys to contact and told Murphy that, in his opinion, the Union could remove Estenich and DeFrancesco as master mechanic and shop steward but could not remove them from their jobs as operators.

Bill Murphy admits he told Harry White that he laid off Estenich because of internal union politics. At the hearing before me Murphy claimed that this was not the real reason. Business records introduced into evidence at the hearing reflect that PECO, for the month that Estenich was laid off, used more and not less operators and there was no need to lay anyone off because of reduced demand for backhoe operators. No one needed to be laid off.

The facts in this case demonstrate that Estenich supported the losing United slate in an internal union election and is shortly thereafter first removed as master mechanic and then laid off even though PECO is satisfied with his work and there is no reduction in the demand for his services. As regards the Respondent Employer the evidence is overwhelming, e.g., Operations Manager Bill Murphy tells PECO's Harry White and former Union Business Agent John Hearn about the pressure from the Union to get rid of Estenich. As regards the Union I note that Murphy's statements about the Union to White and Hearn are admissible against the Employer but not against the Union except in so far as Murphy acted as an agent for the Union, which he did not. However, circumstantially the case against the Union is strong, e.g., Estenich supports the losing side in an internal union election, the Union concedes it thereafter asks the Employer if

it has any "problems" with Estenich under circumstances where it would be highly inappropriate for the Union in which Estenich is a member to ask such a question unless they were looking to get the Employer to get rid of Estenich, and the Union suggests as Estenich's replacement a member who supported the winning side in the recent internal union election.

REMEDY

The remedy in this case is for both the Respondent Employer and Respondent Union to be ordered to cease and desist from this or similar misconduct, post appropriate notices, and jointly and severally make Lawrence Estenich whole for the loss of any pay or benefits occasioned by his unlawful removal as master mechanic from the time of his removal in October 1992 until the Union and the Respondent agreed that there was no further need for a master mechanic and to make him whole for any loss of pay or benefits occasioned by his unlawful lay off.

CONCLUSIONS OF LAW

1. Respondent Employer is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Employer violated Section 8(a)(1) and (3) of the Act when it removed Lawrence Estenich as master mechanic in October 1992 and when it laid off Lawrence Estenich in January 1993 because of his opposition to union officials in an internal union election.

4. Respondent Union violated Section 8(b)(1)(A) and (2) of the Act when it caused Respondent Employer to remove Lawrence Estenich as master mechanic in October 1992 and caused Respondent Employer to lay off Lawrence Estenich in January 1993 because of his opposition to union officials in an internal union election.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

A. The Respondent Employer, Wenner Ford Tractor Rentals, Inc., Concordville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Removing employees from their position as master mechanic or laying off employees because of their opposition to union officials in an internal union election.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with the Respondent Union make Lawrence Estenich whole for any loss of pay and other benefits suffered by him because of his unlawful removal as master mechanic in October 1992 and unlawful layoff in January 1993. Backpay to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). (See generally *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).)

(b) Expunge from its files any references to the removal from the master mechanic position and layoff of Lawrence Estenich and notify him in writing that this has been done and that evidence of these unlawful actions will not be used as a basis for future personnel action against him.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Concordville, Pennsylvania, copies of the attached notice to employees marked as an "Appendix."² Copies of this notice on forms provided by the Regional Director for Region 4, after being signed by the Respondent Employer's authorized representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Employer has taken to comply.

B. The Respondent Union, International Union of Operating Engineers, Local 542, its agents, successors, and assigns, shall

1. Cease and desist from

(a) Causing employers to remove as master mechanics or layoff members because the member opposed union officials in an internal union election.

(b) In any like or related manner interfering, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with Respondent Employer make Lawrence Estenich whole for any loss of pay and other benefits suffered by him because of his unlawful removal as master mechanic in October 1992 and unlawful layoff in January 1993. Backpay to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). (See generally *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).)

¹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Post at the union hall copies of the attached notice to members marked as an "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to

members, are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.⁴

³ See fn. 2 above.

⁴ The General Counsel's motion to correct transcript is granted.